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5 Attorneys for Malaga County Water District
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8 **CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD**
9 **CENTRAL VALLEY REGION**

10) Complaint No. R5-2013-0527
11)
12) In the Matter of the Administrative Civil)
13) Liability)
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DECLARATION OF NEAL E. COSTANZO IN SUPPORT OF MOTION OR APPLICATION FOR SEPARATE PRIOR TRIAL ON DEFENSE OF LATCHES, OBJECTIONS TO EVIDENCE AND DETERMINATION OF VALIDITY OF HEARING PROCEDURES ESTABLISHED BY PROSECUTION TEAM

18 I Neal E. Costanzo declare:

19 1. I am the attorney for Malaga County Water District (Malaga) and I am the
20 "legal counsel" referred to as having responded to the Notice of Violation dated July 8,
21 2010, by letter dated July 22, 2010, to the November 5, 2010, Notice of Violation,
22 responded to by letter of January 6, 2011 and the December 9, 2011, Notice of
23 Violation responded to on January 3, 2010. (See Administrative Liability Complaint
24 (ALC) at ¶¶8 through 13).

25 2. Not included in evidence submitted to the "Advisory Team" by the
26 "Prosecution Team", or mentioned anywhere in the Complaint is a Notice of Violation
27 dated April 12, 2012 attached and incorporated by reference as Exhibit A or my
28 response to that Notice of Violation attached and incorporated by reference as Exhibit

DECLARATION OF NEAL E. COSTANZO IN SUPPORT OF MOTION

1 B. This response to that Notice of Violation was in fact responded to by an attorney
2 employed by the State Water Resources Control Board on May 17, 2012 and I
3 responded to that letter by letter dated May 23, 2012. The letter by the staff attorney is
4 attached as Exhibit C and my letter responding to her is attached as Exhibit D. Also not
5 referred to in the Complaint are included with the "Prosecution Team" evidence
6 submitted is a July 7, 2010, letter from Pamela Creedon which purports to be a demand
7 for payment of "outstanding balance of Administrative Civil Liability Order R5-2006-
8 0003" and my August 9, 2010, response, attached as Exhibits E and F, respectively.

9 3. Included in the Prosecution Team evidence is Order R5-2008-0033, but
10 not included is Cease and Desist Order R5-2008-0032 and Administrative Civil Liability
11 Order R5-2006-003. Those documents are submitted with Malaga's evidence.

12 4. In accordance with the letter which transmitted the Administrative Liability
13 Complaint I sent a letter to Lonnie Wass and Pamela Creedon on May 23, 2013. On
14 May 28, 2013 Ellen Howard, the "Counsel for the Prosecution Team" submitted a
15 "Prosecution Response to Objection to Hearing Procedures". The "Response" which
16 includes a copy of the May 23, 2013 letter together with the "Hearing Procedure for
17 Administrative Civil Liability Complaint R5-2013-0527" are all attached and incorporated
18 by reference as Exhibit G. The response was submitted to David Coupe and Ken
19 Landau, the members of the "Advisory Team" referred to in the Hearing Procedure
20 document. Coupe is an attorney at the San Francisco Regional Board and Landau is
21 the Assistant Executive Director, presumably subject to the supervision of the Executive
22 Director, Creedon. On June 6, 2013, I sent an email to Ms. Howard noting, among
23 other things, that the Hearing Procedures document did not apprise us to whom
24 submissions should be filed or how. Howard responded that all submissions were to be
25 made by Malaga to the Advisory Team. Copies of my June 6, 2013 email to Ms.
26 Howard together with her response of the same date are attached and incorporated by
27 reference as Exhibit H.

28 5. On the same date, June 6, 2013, I received an unsolicited email from

1 David Coupe purporting to rule on the multiple requests made in the Prosecution
2 "Response" and purporting to rule on objections ostensibly made in the May 23, 2013,
3 letter with respect to the Hearing Procedure document. A copy of that email is attached
4 and incorporated by reference as Exhibit I.

5 6. Other than as specifically noted above, at no time have I ever received
6 any response from anyone at the Regional Board or their staff responding to any of the
7 various correspondence that I have sent addressing Notices of Violations and
8 Creedon's letter demanding an outstanding balance in excess of \$131,000 which is not
9 owed.

10 I declare under penalty of perjury under the laws of the State of California that
11 the foregoing is true and correct.

12 //

13 COSTANZO & ASSOCIATES

14
15 Dated: June ZC, 2013

16 By: _____

17 Neal E. Costanzo
18 Attorneys for Plaintiff
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EXHIBIT A



Linda S. Adams
Secretary for
Environmental
Protection

California Regional Water Quality Control Board Central Valley Region

Katherine Hart, Chair

1685 E Street, Fresno, California 93706
(559) 445-5116 • Fax (559) 445-5910
<http://www.waterboards.ca.gov/centralvalley>



Arnold
Schwarzenegger
Governor

Item 13 B.1

7 July 2010

Russ Holcomb
Malaga County Water District
3580 South Frank Street
Fresno, CA 93725

DEMAND FOR PAYMENT OF OUTSTANDING BALANCE OF ADMINISTRATIVE CIVIL LIABILITY ORDER R5-2006-0003, MALAGA COUNTY WATER DISTRICT WASTEWATER TREATMENT FACILITY (CA0084239, RM 373541), FRESNO COUNTY

On 15 April 2005, the Executive Officer of the California Regional Water Quality Control Board, Central Valley Region (Central Valley Water Board or Board) issued Administrative Civil Liability Complaint R5-2005-0510 (the "Complaint") to the Malaga County Water District (District). The Complaint charged the District with administrative civil liability in the amount of \$1,107,000 for violations of Waste Discharge Requirements (WDRs) Order 99-100 (NPDES Permit CA0084239). These violations occurred from 1 February 2000 through 30 June 2004, and are subject to Mandatory Minimum Penalties (MMPs) pursuant to California Water Code section 13385(i). On 26 January 2006, the Executive Officer issued Administrative Civil Liability Order R5-2006-0003 (the "Order") to the District in the amount of \$1,107,000. The Order approves the District's implementation of compliance projects (CPs) that would offset \$131,165 in MMPs and permanently suspends \$975,835 in MMPs.

The Order stipulates that the Board will permanently suspend penalties equal to the actual costs expended by the District on all or a combination of CPs 4, 5, 6, and 7 up to the outstanding liability amount of \$131,165. The Order requires the District to pay any amount not permanently suspended if the District fails to complete the CPs within the timelines contained in the Order, and if the Executive Officer demands payment after providing notice to the District of its failure to comply with the Order. Under the terms of the Order, the District is, given 30 days from receipt of such notice to remit payment to the State Water Board. The District's failure or inability to acquire sufficient funds shall not be an acceptable defense against a demand for payment.

The Executive Officer hereby notifies the District that the Board considers the District to be in violation of the terms of the Order, and demands payment of the outstanding administrative civil liability. This notice is provided for two reasons. First, the District has failed to meet the compliance project completion dates contained in the Order and, to date, has not completed CPs 4, 5, 6, and 7, which were to have been completed by 1 October 2008. Second, according to the District's 9 December 2009 compliance project update, all but \$70,000 of the planned expenditures for CPs 4, 5, 6, and 7 will be offset by a Small Community Grant issued by the State Water Board and a Community Development Block Grant issued by the California Department of Housing and Community Development. It is the policy of the State Water Board that outstanding liability cannot be offset through grant money.

California Environmental Protection Agency

By **6 August 2010**, please submit payment of **one hundred thirty-one thousand one hundred sixty-five dollars (\$131,165)** in the form of a check payable to the State Water Pollution Cleanup and Abatement Account, and submitted to the Central Valley Water Board's Fresno office at the above address. The check shall contain a reference to Administrative Civil Liability Order R5-2006-0003.

It is also important to note that on 21 November 2008, the Board's Assistant Executive Officer issued Administrative Civil Liability Complaint R5-2008-0583 to the District in the amount of \$9,000 for violations of WDRs Order 99-100 (NPDES Permit CA0084239) subject to MMPs that occurred at its WWTF from 1 February 2004 through 13 March 2008. The District's 23 December 2008 letter requests that the additional \$9,000 liability be included in the completion of the CPs approved by the 2006 Order. The District's failure to implement the CPs by the deadlines contained in the Order, and the fact that the CPs will be funded by grants, preclude the Board from authorizing the use of the CPs to offset the penalties at this time.

Board staff has also reviewed the District's self-monitoring reports covering the period from 14 March 2008 through 31 January 2010. The District continues to violate effluent limitations contained in WDRs Order R5-2008-0033, which renews and replaces WDRs Order 99-100, and many of these violations are subject to MMPs. A Notice of Violation and Record of Violations will soon be issued, giving notice that the District has accrued another sixty thousand dollars (\$60,000) of MMPs through 31 January 2010.

If the recent violations are added to the outstanding amount, the District would owe **two-hundred thousand, one hundred and sixty-five dollars (\$200,165)** while continuing to violate effluent limitations in WDRs Order R5-2008-0033. An alternate proposal involving connecting the District's sewer collection system to the City of Fresno's sewer collection system has been discussed. The Central Valley Water Board is strongly supportive of regionalization efforts, and there may be a way to explore such an option as a way of relieving the District of the liability created by the ongoing effluent limitation violations.

If you have any questions regarding this matter, please contact Jill Walsh at (559) 445-5130.



for Pamela C. Creedon
Executive Officer

cc: Kenneth Greenberg, U.S. EPA, Region IX, San Francisco
Reed Sato, Office of Enforcement, SWRCB, Sacramento
Patrick Pulupa, Office of Chief Counsel, SWRCB, Sacramento
Emel Wadhvani, Office of Chief Counsel, SWRCB, Sacramento
Charles Garabedian, Jr., President, Board of Directors, Malaga CWD, Malaga
Rene Ramirez, Director of Public Utilities, City of Fresno
Steven Hogg, Assistant Director of Public Utilities, City of Fresno
Michael Taylor, Provost and Pritchard, Fresno

EXHIBIT B

NEAL E. COSTANZO
MICHAEL G. SLATER

LAW OFFICES
COSTANZO & ASSOCIATES
A PROFESSIONAL CORPORATION
575 E. LOCUST AVENUE
SUITE 115
FRESNO, CALIFORNIA 93720-2928
(559) 261-0163

FAX (559) 261-0706
OUR FILE NO. 03024-005

August 9, 2010

Pamela C. Creedon, Executive Officer
California Regional Water Quality Control Board
Central Valley Region
1685 E Street
Fresno, CA 93706

Re: Demand for Payment of \$131,165

Dear Ms. Creedon:

Your July 7, 2010, letter to Malaga County Water District has been referred to me for a response. The demand for payment of \$131,165 ostensibly due as the balance of an amount not permanently suspended under Administrative Civil Liability Order R5-2006-0003 is completely unfounded and is not going to be complied with.

The subject Order states that the Regional Water Quality Control Board (RWQCB) will and has agreed to permanently suspend penalties that are equal to the cost of compliance projects (CPs) which are identified as CPs 4, 5, 6 and 7. The letter argues that the \$131,165 is due under the subject Order for "two reasons," both of which are completely baseless. The first claimed reason for the incorrect conclusion that the stated amount is owed is that the District "failed to meet the compliance project completion dates" which you indicate to be October 1, 2008. RWQCB received a letter from the District dated September 18, 2008, providing a status report on the subject CPs and an extension request to allow completion of the CPs after the October 1, 2008, date specified in the order. RWQCB granted that extension request to and including December 31, 2008. The District sent RWQCB a letter on January 20, 2009, with additional information associated with the CPs and a request that RWQCB consider the executed agreement between the District and the contractor retained to perform the work associated with CPs as sufficient for deferral of penalties or fines associated with the subject Order. RWQCB never responded to this request.

Pamela C. Creedon, Executive Officer
August 9, 2010
Page 2

Needless to say, having granted the extension requested initially and, by failing to respond to, or taking action to insist upon strict compliance with the extended deadline, in the face of a written submission by the District indicating that the CPs were moving forward and that an additional extension was necessary to permit completion, RWQCB cannot now take the contrary position that the penalties for which payment is demanded were not, in fact, permanently suspended by the District's "implementation of [those] compliance projects," which, by the terms of the Order, offset the \$131,165 you are now demanding be paid.

The second reason for your claimed right to receive payment of the \$131,165 in penalties that have been offset by implementation of these compliance projects is particularly specious. You claim, for the first time, the existence of a policy of the "State Water Board," that the "outstanding liability cannot be offset through grant money." If any such policy does exist, which is exceedingly doubtful, it would be ineffective as against Malaga County Water District unless reflected by a published, codified regulation of the State Water Board. There is no such regulation. We do not believe there is any such policy. The reason we do not believe there is any such policy is because your conduct with respect to this Order is completely inconsistent with the claimed existence of that policy. There are no references in the subject Order that grant funding of CPs is not allowed. Your letter acknowledges receiving the District's compliance project updates through December 2009. All but approximately \$50,000 (most of which was retention) had been paid by December 2009 to the contractor for the CPs that are the subject of this Order. The technical report for compliance projects submitted to RWQCB expressly acknowledges that the District was submitting applications to the State Water Resources Control Board for assistance and the draft Administrative Liability Order prepared by RWQCB states unequivocally the District's intent to secure funding for the project from various grant programs. Thus, grant funding of CPs is specifically allowed by the subject Order, which plainly would override anything in some apparently unwritten, unpublished policy you claim to exist at the State Water Resources Control Board. The CPs have been completed. Notice of completion was approved by the District Board on July 13, 2010.

Needless to say, RWQCB cannot expressly permit the District to implement the CPs in precisely the manner in which they have been implemented and completed and then claim, contrary to the terms of its order, that the fine is not permanently suspended and offset by completion of the projects. Because your demand for payment is baseless, unfounded and completely inconsistent with the terms of the Order itself, Malaga County Water District has no intention of complying with the demand made in your July 7, 2010, letter. The Notice of Violation mentioned in your letter has already been separately responded to. It is obvious that both of these demands are the product of a completely unauthorized effort by RWQCB staff to promote some ill-defined "regionalization efforts" that would result in the discontinuation of the operation of Malaga's wastewater treatment facilities. These "efforts" are well in excess of the statutory power authority and jurisdiction

Pamela C. Creedon, Executive Officer
August 9, 2010
Page 3

of RWQCB and further threats of this nature will be met by the filing of an application for a writ of mandate.

Very truly yours,

COSTANZO & ASSOCIATES

Neal E. Costanzo

NEC/tm

cc: Michael Taylor, Provost & Pritchard
Russ Holcomb

EXHIBIT C



EDMUND G. BROWN JR.
GOVERNOR

MATTHEW RODRIGUEZ
SECRETARY FOR
ENVIRONMENTAL PROTECTION

MCWD
400.02
(2012)

Central Valley Regional Water Quality Control Board

12 April 2012

CERTIFIED MAIL
70112000000117692463

NOTICE OF VIOLATION

Mr. Russ Holcomb
Malaga County Water District
3580 South Frank Street
Fresno, CA 93725

VIOLATION OF WASTE DISCHARGE REQUIREMENTS WDR ORDER R5-2008-0033 AND CEASE AND DESIST ORDER R5-2008-0032, MALAGA COUNTY WATER DISTRICT WASTEWATER TREATMENT FACILITY (NPDES CA0084239, RM 384386), FRESNO COUNTY

Central Valley Water Board staff (staff) reviewed Malaga County Water District (District) WWTF Waste Discharge Requirements Order (WDR) R5-2008-0033, Cease and Desist Order (CDO) R5-2008-0032 (both adopted on 14 March 2008) and evaluated the District's compliance. The District violated, is in violation of, or threatens to violate the WDR and CDO as follows:

REPORT REQUIREMENTS

WDR R5-2008-0033 requires the following reports:

- 1) By 12 June 2008, Provision VI. C. 2.a.i required a Toxicity Reduction Evaluation (TRE) work plan that included procedures for accelerated chronic toxicity monitoring and TRE initiation. On 19 June 2008, the District submitted its initial TRE work plan. By 5 August 2008 letter Central Valley Water Board staff (staff) deemed the TRE work plan incomplete.
 - 9 September 2008 – revised report received – report complete - 89 days late.
- 2) By 14 September 2008, Provision VI. C. 2.b required the District to submit a work plan and schedule for providing best practicable treatment or control (BPTC) as required by Resolution 68-16. On 24 July 2008, the District submitted its BPTC evaluation and submitted supplemental information on 9 September 2008 and 1 May 2009. By 24 September 2009 letter, staff deemed the BPTC evaluation incomplete.
 - 23 October 2009 – revised report received – 404 days late
- 3) By 15 September 2008, Provision VI. C. 2.d requires the District to submit a technical report evaluating the groundwater monitoring system. On 15 July 2008, the District submitted the report with supplemental information submitted on 3 November 2008.

KARL E. LONGLEY SCD, P.E., CHAIR | PAMELA G. CREEDON, EXECUTIVE OFFICER

1805 E Street, Fresno, CA 93708 | www.waterboards.ca.gov/centralvalley

By 24 September 2009 letter, staff deemed the report incomplete. On 23 October 2009, the District submitted an updated evaluation.

- 23 October 2009 – revised report received - 403 days late
- 4) Within 21 days of the end of the quarter, Monitoring and Reporting Requirements No. R5-2008-0033 D. 4. Pretreatment Reporting Requirements require the District to submit quarterly reports (the 4th quarter monitoring is to be included with the annual report).
- 2nd Quarter 2008 Pretreatment – not received – due 21 July 2008
 - 3rd Quarter 2008 Pretreatment – not received – due 21 October 2008
 - 2nd Quarter 2009 Pretreatment – not received – due 21 July 2009
 - 3rd Quarter 2009 Pretreatment – not received – due 21 October 2009
 - 1st Quarter 2010 Pretreatment – not received – due 21 April 2010
 - 2nd Quarter 2010 Pretreatment – not received – due 21 July 2010
 - 3rd Quarter 2010 Pretreatment – not received – due 21 October 2010
 - 1st Quarter 2011 Pretreatment – not received – due 21 April 2011
 - 3rd Quarter 2011 Pretreatment - received 10/31/2011-10 days late
- 5) By 28 February each year, Monitoring and Reporting Requirements R5-2008-0033, D. 4 Pretreatment Reporting Requirements, require the District to submit annual pretreatment reports.
- 2008 Annual Pretreatment - received 3 April 2009 - report 34 days late
 - 2009 Annual Pretreatment – not received – due 28 February 2010
 - 2011 Annual Pretreatment - received 1 March 2012 – report 2 days late
- 6) By 19 February each year, Provision VI. C. 5.b.iv Sludge/Biosolids Discharge Specifications require the District to comply with existing federal and state biosolids laws and regulations, including permitting requirements and technical standards included in 40 CFR 503, which requires an annual biosolids report due to USEPA. On 13 March 2012, staff contacted USEPA and was told that the District has never submitted an annual biosolids report.
- 2008 Annual Biosolids – not received – due 19 February 2009
 - 2009 Annual Biosolids – not received – due 19 February 2010
 - 2010 Annual Biosolids – not received – due 19 February 2011
 - 2011 Annual Biosolids – received 15 March 2012, deemed incomplete by USEPA (see attached 20 March 2012 email)
- 7) By 14 July 2008, Provision VI. C. 7.a.ii Treatment Feasibility Study required the District to submit a work plan and time schedule to perform an engineering treatment feasibility study.
- 9 December 2009 - report received - 513 days late.

CDO R5-2008- 0032 requires the following reports:

- 8) By 14 April 2008, Ordered item 2.a. required the District to submit a work plan and proposed implementation schedule for improvement of WWTF influent flow metering.
 - 21 April 2008 report received -- 7 days late
- 9) By 14 March 2008, Ordered item 2.b. required the District is to submit a technical report certifying the influent flow modifications are complete and meter is properly calibrated. On 6 August 2009 the District submitted flow meter calibration certificate.
 - 9 December 2009 -- report received -- 635 days late
- 10) By 13 June 2008, Ordered item 3.a required the District to submit the results of a study evaluating the WWTF treatment and disposal capacity with a work plan and time schedule to implement short-term and long-term measures to meet WWTF treatment and disposal needs through at least 2028. On 28 July 2008, the District submitted the report. On 24 September 2009, staff deemed report incomplete and inadequate and required a revised report. A revised report was never received.
 - Treatment and Disposal Capacity -- not received -- due 13 June, 2008
- 11) By 14 March 2011, Ordered item 3.d requires the District complete short-term measures and to submit a technical report certifying modifications were completed as designed. On 29 April 2011, the District submitted report indicating that not all short-term measures were complete.
 - Short-term Measures -- all measures not completed -- due 14 March 2011

As stipulated in the WDR, and CDO, the District is required to submit technical and monitoring reports pursuant to section 13267 and 13383 of the California Water Code. To date, the reports cited above do not meet the requirements of the WDR and CDO. Please be advised that section 13268 of the California Water Code authorizes assessment of civil administrative liability of up to \$1000 per day a report is late

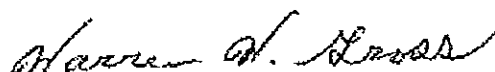
Many of the above referenced reports have not been submitted or were found to be incomplete. Submit any available reports identified as not submitted forthwith. Potential civil liability continues to accrue for late and incomplete reports.

SELF-MONITORING REPORTS REVIEW

Staff reviewed the District's self-monitoring reports for non-mandatory minimum penalty violations for the period of 14 March 2008 to 31 January 2012. The District violated, is in violation of, or threatens to violate WDR R5-2008-0033 as follows:

- 12) Facility Effluent Limitations IV.A.2 for exceeding the EC limit at Discharge Point 002 - one violation.
- 13) Receiving Water Limitations V.B.1 for exceeding the EC ground water limitation of 900 umhos/cm - 24 violations
- 14) Receiving Water Limitations V.B.2 for exceeding the nitrogen ground water limitation of 10 mg/L - two violations
- 15) Provision VI. B. for failure to comply with the Monitoring and Reporting Program by submitting deficient self-monitoring reports. From 14 March 2008 to 31 January 2012 there were 65 deficient monitoring violations.
- 16) Provision VI. B. for failure to comply with the Monitoring and Reporting Program by submitting deficient self-monitoring reports. From 14 March 2008 to 31 January 2012 there were 87 deficient reporting violations.
- 17) Provision VI. C.4. iv for failure to maintain two feet of operating freeboard in the ponds- 272 violations in 2008 and 2009.
- 18) Provision VI. C. 5.c Sludge/Biosolids Disposal Requirements for failing to dispose of biosolids as authorized by the WDR. The District states in its 2011 pretreatment and annual report that it is composting biosolids onsite, contrary to the WDR.

If you have any questions regarding this matter, please contact Jill Walsh at (559) 445-5130 or at jjwalsh@waterboards.ca.gov.



WARREN W. GROSS
Senior Engineering Geologist
CEG 1528, CHG 681

Attachment: 20 March 2012 email from USEPA

cc: Ellen Howard, Office of Enforcement, State Water Board, Sacramento
Dan Radulescu, Central Valley Water Board, Rancho Cordova
Charles Garabedian, Jr., Malaga County Water District, Fresno
Michael Taylor, Provost & Pritchard, Fresno
Neal E. Costanzo, Costanzo & Associates, Fresno

EXHIBIT D

NEAL E. COSTANZO
MICHAEL G. SLATER

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(559) 261-0163

FAX (559) 261-0706
OUR FILE NO. 03024-005

May 10, 2012

SENT VIA U.S. MAIL/EMAIL: jwalsh@waterboards.ca.gov

Warren W. Gross, Senior Engineering Geologist
California Regional Water Quality Control
Board, Central Valley Region
1685 E. Street
Fresno, CA 93706

Re: Notice of Violation Dated April 12, 2012

Dear Mr. Gross:

Malaga County Water District received your purported Notice of Violation dated April 12, 2012. They have referred it to me for a response because the Notice is premised on a complete disregard of the law that regulates the ability of your agency to issue such notices. The notice is based on clearly fabricated factual allegations.

It is unclear from the notice, as is normally the case with respect to correspondence we receive from you, what it is you are attempting to do by the issuance of this supposed Notice of Violation, and whether there is any violation of the type you refer to in the notice. As you know, Malaga has been the recipient of numerous notices of violation, issued by you, based upon purported, but nonexistent, violations of the very same cease and desist order you reference in this letter and dating back to the issuance of the order. We have consistently responded to these notices of violation by pointing out that your claims are demonstrably incorrect. Each time we respond to one of your purported notices of violation, we never receive any response back from you or your agency.

While your agency does have the authority to impose fines for violations of statute, regulation, or orders statutes and regulations also prescribe what is and is not a violation and the procedures that must be employed to provide notice of a violation and a proposed fine that comport with applicable requirements of Constitutional due process and give the proposed citee appropriate and complete notice and an opportunity to be heard. Your purported notices of violation never conform to any of these requirements and yet they always threaten the imposition of fines. We have advised you previously that your issuance of these purported notices of violations is unlawful and in excess of your agency's authority. We have advised you repeatedly that if you do not stop the issuance of the supposed notices of violation, we will be forced to file in court the appropriate petition for writ of mandate in addition to an administrative complaint directed against you personally. You have failed to heed any of these warnings and appear to be bent on persisting in the

practice of unlawfully threatening the Malaga County Water District with some form of unspecified sanction.

A review of the various items (numbered 1 through 18) in your letter, to the extent the detail disclosed in that letter permits, should demonstrate for you clearly that what you are doing by issuing these notices of violation is making blatantly false misrepresentations for the purpose of advancing an ulterior, but not so very carefully hidden agenda. In the interests of brevity, the items below correspond to the numbered "violations" listed in your letter.

REPORT REQUIREMENTS

1. TRE Workplan. We agree. The TRE workplan was required by the terms of the order referenced in your letter to be submitted by June 12, 2008. Malaga submitted that report on June 19, 2008. Unless there was an extension, this would mean that the report was submitted 7 days late. You conclude it was submitted 89 days late. Because the 7 day tardy report is a violation that occurred, if at all, more than three years ago, it is not a matter about which the Board may lawfully complain at this point. There is a statute of limitations that applies to your agency. It is precluded from making a determination that a violation occurred, and cannot pursue the violation more than three years after the violation is claimed to have occurred.

We suspect that an extension was provided for submission of this report, but given the fact that your supposed violation is premised upon something that happened far longer than three years ago, we are not going to expend the resources to search our files to determine whether that extension was or was not provided. The violation, if it occurred, simply cannot be pursued by your agency consistent with the requirements of law. Your agency provided comments in response to the TRE report submitted on June 19, 2008, and the District timely responded to those comments by submitting a revised TRE Workplan on September 3, 2008. That workplan was approved by your agency on March 17, 2009. How you conclude the report was submitted 89 days late is a mystery. The mystery, however, is not one that the District is going to make any attempt to resolve, because it simply does not matter. A violation occurring in 2008 simply cannot be pursued.

2. BPTC Workplan and Schedule. The order referred to in your letter does indeed require the BPTC Workplan and Schedule be submitted by September 14, 2008. The District submitted that workplan on July 24, 2008. It supplemented the report on September 9, 2008. Your agency required revisions to what had been submitted and the District responded to those comments on or about October 23, 2009. There is no conceivable violation here. Even if there were, it happened too long ago for your agency to pursue. These facts are indicative of the improper motivation that resulted in the issuance of this particular notice of violation and the prior notices of violation authored by you.

3. Groundwater Monitoring System. Again, the workplan referred to in this item of your letter was submitted prior to the deadline and supplemented thereafter. You repeatedly refer to letters issued by your agency as determinations that the reports are incomplete. That is not what they are. They are simply requests for additional information or corrections or changes to the report that was submitted that were all complied with, in timely fashion. Once again, there is absolutely no basis in fact for your supposed determination of a violation.

4. Quarterly Pretreatment Reports. From the description given in your letter, it is impossible to determine what it is you are referring to as having been not received. With respect to those Pretreatment Reports you indicate were not received at any time prior to April 2010, the lack of receipt cannot be treated as a violation, assuming it occurred at all, because it happened too long ago. With respect to those pretreatment reports you indicate not having received after that date, you need to go back and look at your file. We believe you received each and every one of these reports. The making of false representations in support of a purportedly official notice of violation and apparent attempt to impose some sort of fine or sanction is unlawful and perhaps criminal. If you are requesting that we submit something to you that has not been previously submitted, then you need to apprise us of that fact. Otherwise, we will assume that this item of your letter is yet another false allegation that need not be responded to.

5. Annual Pretreatment Reports. The basis on which you characterize two reports as having been received late is not disclosed. That you claim to not have received a report in February of 2010 should have been brought to the District's attention within a reasonable period of time thereafter. It was not. With respect to these particular reports, and the pretreatment reports you claim to have not received in Item 4 of your letter, you do not indicate one way or another whether you wish to receive a report that you claim not to have received. Please advise us what it is you are seeking by these items so that we may comply, to the extent that is warranted by law.

Your Notice of Violation is light on detail and heavy on conclusions. We cannot evaluate your conclusions without the proper information. Because the dates on which you refer as having received a report does not coincide with the dates our records show the report having been submitted, it is simply not possible to respond to claims that the 2008, 2010, and 2011 reports were submitted late. Further, from our records it does appear that any report not timely submitted was submitted in accordance with an agreement with your agency on extending the due date. We note that you indicate that you did not receive a 2009 report. We have no way of determining whether or not you in fact received this or any other report that you claim not to have received.

6. Biosolids Reports. You indicate several biosolid reports were not received between 2009 and 2011. Those reports are included in the annual reports submitted to your agency. You have received them. You acknowledge receipt of the 2011 biosolids report and claim based on an attached email that this report was deemed incomplete. The

attached email is simply not reasonably susceptible to that interpretation. The email simply, and only states that "some additional information is needed" which is described in the email. You deceptively fail to acknowledge that the email was responded to. Again, this claimed "violation" never occurred and that is apparent from material in your possession.

7. Treatment Facility Study, Workplan and Schedule. There was no response to what was submitted on December 8, 2009. Again, there have been numerous communications with your agency by which deadlines set by the order you refer to have been extended. This is apparently why there was never any complaint by your agency, until your April 12, 2012, letter, about the timeliness of a report received October 9, 2009, nearly four years prior. Needless to say, even if there had been a violation, it is far too late to raise the purported violation now and your agency is precluded by law from attempting to do so.

8. Influent Flow Metering. The response applicable to Item 7 of your letter applies with equal force to Item 8.

9. Certification of Influent Flow of Metering Improvements. Again, the response to Item 7 of your letter is applicable to Item 9.

10. Short Term and Long Term Measures. You indicate that a revised report requested on September 24, 2009, was not received. It is apparent that you are mischaracterizing the September 24, 2009, correspondence from your agency as there is an October 27, 2009, letter to your agency from the District responding to that letter. We cannot discern from your letter what it is you are claiming was "not received," because the claim that something was not received is premised upon a misrepresentation of what occurred.

11. Short Term Measures Completion. You indicate that "short term measures" were not completed as required by March 14, 2011. Yet, you acknowledged receiving the District's April 29, 2011 report which you mischaracterize in Item 11 of your letter. That report apprised you that the March 14, 2011, deadline would not be met, because of funding delays caused by the State of California making it impossible to complete those measures by that due date. This is the first complaint we have received, a year later, about the reported impossibility of meeting that deadline. The fact that the State of California withholds funding for improvements specifically authorized to be made only with that funding cannot possibly amount to any violation of any requirement of any order. If you wish to charge this as a violation or seek some sort of fine or sanction, you need to do so in the manner required by your regulations, which you consistently ignore. Malaga will respond accordingly.

Items 12 through 18 of your letter are indecipherable. Items 12 through 14 do not specify any purported violation occurring at any particular time. We cannot discern what it is you are referring to when you say there have been "24 violations" of "exceeding the EC

Warren W. Gross, Senior Engineering Geologist
May 10, 2012
Page 5

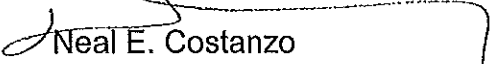
... Limitation," for example, occurring on unspecified dates, or disclosed by unspecified documents. We presume you are simply referring, once again, to the standard "Attachment A" that has accompanied all prior notices of violation we have received from you. Items 15 and 16 refer to the period between March 14, 2008, and January 31, 2012, without identifying any particular violation occurring on any particular date. Again, we presume this is a reference to your prior "Attachment A." You will note that you received, consistently, responses to each and every one of those purposed notices of violation that you apparently attempt to repeat here. The same is true of Item 17, apparently, since we cannot determine what violations you are referring to from the reference that they occurred sometime in "2008 and 2009."

Even you should be able to recognize that a "notice of violation" as provided for by your agency's regulations, is something that is legally required to provide precise, accurate notice of an alleged violation and a meaningful opportunity to respond. Your April 12, 2012, letter does none of that. If you are attempting to identify some violation, and impose some requirement or sanction, the law requires that you specifically identify the alleged violations and actually provide a meaningful opportunity to respond. Without any precise identification of any of the violations referred to in Items 12 through 18 of your letter, the District cannot intelligently respond.

We have repeatedly advised you that you are acting in excess of your agency's jurisdiction and in direct violation of your own agency's regulations relating to how it is required to address what are claimed to be violations of any requirement or order of the regional board. Your persistent issuance of what are effectively meaningless notices of violation is, itself, a violation of law. We would welcome the opportunity to address with you, face to face, whatever legitimate concerns or complaints your agency has about Malaga's wastewater treatment and discharge activities; but, we very obviously cannot, and will not, continue to respond to your apparently unauthorized issuance of notices of violation that make absolutely no sense. The next notice of violation we receive which is issued by you will be responded to by a petition either in the Superior Court or before the Regional Water Quality Control Board which seeks to specifically restrain you and your agency from disregarding the requirements you are obligated to observe by law.

Very truly yours,

COSTANZO & ASSOCIATES


Neal E. Costanzo
Attorney for Malaga County Water District

NEC/js

cc: Michael Taylor
Russ Holcomb

EXHIBIT E



EDMUND G. BROWN JR.
GOVERNOR



MATTHEW RODRIGUEZ
SECRETARY FOR
ENVIRONMENTAL PROTECTION

State Water Resources Control Board

May 17, 2012

Via US Mail Only

Mr. Neal Costanzo
Costanzo & Associates
575 E. Locust Avenue, Suite 115
Fresno, California 93720-2928

SUBJECT: NOTICE OF VIOLATION DATED APRIL 12, 2012

Dear Mr. Costanzo,

The State Water Resources Control Board's Office of Enforcement represents the Central Valley Regional Water Quality Control Board (Central Valley Water Board) enforcement staff who issued Malaga County Water District the April 12, 2012, Notice of Violation (NOV). We are in receipt of your bumptious May 10, 2012, letter in response to the NOV. As you know, a NOV is not a formal enforcement action but rather a notice of an alleged instance of noncompliance with Central Valley Water Board requirements.

The cited instances of noncompliance in the April 12, 2012, NOV were identified by the staff after a comprehensive review of the file to determine whether Malaga County Water District complied with the terms of Waste Discharge Requirement Order No. R5-2008-0033 (Permit) and Cease and Desist Order No. R5-2008-0032 (CDO). The staff identified discrete categories of violation where Malaga County Water District did not comply with Central Valley Water Board directives in the Permit or the CDO. If the Central Valley Water Board staff, in consultation with the Executive Officer, decides to propose a penalty for any alleged violations, then Malaga County Water District will receive notice of an administrative civil liability hearing and an opportunity to be heard by the Central Valley Water Board that comports with all procedural due process requirements.

Please direct all legal correspondence pertaining to Malaga County Water District to my attention and to my colleague, Staff Counsel Ellen Howard, by U.S. Postal Service to the State Water Resources Control Board, Office of Enforcement, 1001 I Street, 16th Floor, Sacramento, California, 95816. You may also send correspondence via electronic mail to the following addresses: MOkamoto@waterboards.ca.gov and EHoward@waterboards.ca.gov.

Sincerely,

Mayumi E. Okamoto
Staff Counsel
Office of Enforcement

cc: See next page.

CHARLES R. HOPPIN, CHAIRMAN | THOMAS HOWARD, EXECUTIVE DIRECTOR

1001 I Street, Sacramento, CA 95814 | Mailing Address: P.O. Box 100, Sacramento, CA 95812-0100 | www.waterboards.ca.gov

cc: (via email only)

Central Valley Regional Water Quality Control Board

Mr. Clay Rodgers
Assistant Executive Officer
CRodgers@waterboards.ca.gov

Mr. Lonnie Wass, Supervisor
Non-15, NPDES, UST, Stormwater & Cleanup Section
LWass@waterboards.ca.gov

Mr. Warren Gross
Senior Engineering Geologist
Non-15, NPDES, UST, Stormwater & Cleanup Section
WGross@waterboards.ca.gov

Ms. Jill Walsh
Compliance/Enforcement Monitoring Data Unit
Non-15, NPDES, UST, Stormwater & Cleanup Section
JWalsh@waterboards.ca.gov

State Water Resources Control Board

Ms. Ellen Howard
Staff Counsel
Office of Enforcement
EHoward@waterboards.ca.gov

EXHIBIT F

NEAL E. COSTANZO
MICHAEL G. SLATER

LAW OFFICES
COSTANZO & ASSOCIATES
A PROFESSIONAL CORPORATION
575 E. LOCUST AVENUE
SUITE 115
FRESNO, CALIFORNIA 93720-2928
(559) 261-0163

FAX (559) 281-0708
OUR FILE NO. 03024-005

May 23, 2012

Mayumi E. Okamoto
Staff Counsel
Office of Enforcement
State Water Resources
Control Board
P.O. Box 100
Sacramento, CA 95812-0100

Re: Notice of Violation (NOV) Dated April 12, 2012

Dear Ms. Okamoto:

You are incorrect, I am not aware that a "NOV is not a formal enforcement action but rather a notice of an alleged instance of non-compliance with Central Valley Water Board Requirements". The only notices of violation authorized by statute or regulation are formal enforcement actions. Staff has no authority whatsoever to make a determination that a violation occurred, or to provide notice that he has made that determination to Malaga County Water District. Unfortunately, because we receive these NOV's constantly, always issued by the same individual, and noting purported violations that plainly never occurred, we always feel compelled and will continue to respond to the issuance of these NOV's by pointing out that they are premised entirely on the willingness of a staff person to make boldly false statements. We believe your agency is failing to act in accordance with the law. If we receive another NOV purporting to make determinations that some requirement was not complied with by Malaga County Water District, we will file a Petition for Writ of Mandate seeking an order enjoining you from continuing with this unauthorized practice.

Malaga County Water District will not sit idly by while staff members unlawfully make determinations of violations and publish those determinations to other persons or entities or agencies. We know what the agenda of the Central Valley Water Board is and it will not be permitted to rely on its unlawful and demonstrably false NOV's to advance that agenda.

Very truly yours,

COSTANZO & ASSOCIATES

Neal E. Costanzo
Attorney for Malaga
County Water District

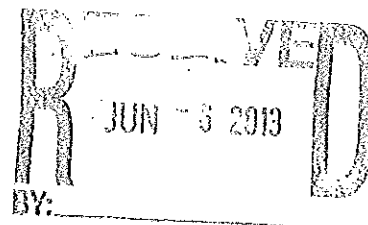
NEC/js

cc: Russ Holcomb

EXHIBIT G

Walsh, Jill@Waterboards

From: Howard, Ellen@Waterboards
Sent: Tuesday, June 04, 2013 4:22 PM
To: Walsh, Jill@Waterboards
Subject: FW: ACLC R5-2013-0527: Prosecution Team Response to Objections to Hearing Procedures
Attachments: 20130528_185749.pdf



From: Howard, Ellen@Waterboards
Sent: Tuesday, May 28, 2013 7:14 PM
To: Coupe, David@Waterboards; Landau, Ken@Waterboards
Cc: Walsh, Jill@Waterboards; Wass, Lonnie@Waterboards; Gross, Warren@Waterboards; Rodgers, Clay@Waterboards; Creedon, Pamela@Waterboards; ncostanzo@costanzolaw.com; rholcomb@malagacwd.org; Ralph, James@Waterboards
Subject: ACLC R5-2013-0527: Prosecution Team Response to Objections to Hearing Procedures

FOR PURPOSES OF EX PARTE COMMUNICATIONS, THE DISCHARGER IS CC'ED ON THIS EMAIL

Mr. Landau and Mr. Coupe-

On May 23, 2013 the Prosecution Team received correspondence related to the above-referenced ACLC against Malaga County Water District. Attached, please find the Prosecution Team's response to the Objections to the Hearing Procedures raised in the May 23 letter. For your convenience, a copy of Malaga's original letter has been included as an attachment to our reply.

A hard copy of this communication will also be mailed to the discharger.

Ellen Howard
Counsel for the Prosecution Team

Ellen Howard
Staff Counsel, Office of Enforcement
State Water Resources Control Board
1001 "I" Street
Sacramento, CA 95814
916.341.5677

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
CENTRAL VALLEY REGION

In the matter of Administrative Civil Liability
Complaint No. R5-2013-0527

Prosecution Team Response to Objection to
Hearing Procedures

**PROSECUTION RESPONSE TO OBJECTION TO HEARING PROCEDURES;
ADMINISTRATIVE CIVIL LIABILITY COMPLAINT NO. R5-2013-0527**

TO ALL PARTIES HEREIN;

The Prosecution Team is in receipt of a 23 May 2013 letter addressed to various members of the Central Valley Water Board Prosecution Staff from Malaga County Water District (Malaga). The letter, which has been attached to this brief and referenced herein, contains multiple loosely defined challenges to Administrative Civil Liability Complaint R5-2013-0527 (May 2013 ACLC). The 23 May 2013 letter, which has been submitted with this brief as Attachment A, does not clearly define specific objections to factual allegations or procedural process associated with the May 2013 ACLC. However, after repeated review of the obtuse arguments contained in counsel's letter, the Prosecution Team has deciphered four categories of challenges to the Regional Board's Hearing Procedures as issued and its regulatory authority. The Prosecution Team is responding to those challenges as set forth below.

I. Malaga's Objections to the Hearing Procedures for the May 2013 ACLC are Untimely

Firstly, Malaga argues that the Hearing Procedures are improper. The Prosecution Team notes that this objection was not made until 23 May 2013, thirteen (13) days after the deadline to submit Objections to the Hearing Procedures contained in the Hearing Procedures document itself. As such, Malaga's objection is untimely.

Malaga correctly points out that the Hearing Procedures were not contained within the May 2013 ACLC package. Due to a clerical oversight, the Hearing Procedure document was inadvertently left out of the

mailing containing the ACLC. Staff immediately noticed this error and sent a second mailing containing the Hearing Procedures on 3 May 2013. This was sent via certified mail and were signed for by Malaga staff on 6 May 2013. The hearing procedures were also sent via email addressed to both Malaga's counsel as well as to the Malaga's general manager via the email address listed in CIWQS (Attachment B). Records from the CIWQS Help Center show that the email address on file for Malaga is valid and has successfully received correspondence on multiple occasions over the last 6 months (Attachment C). The Prosecution Team finds it very hard to believe that no one from Malaga received the Hearing Procedures until 16 May 2013 as alleged in the 23 May 2013 letter. We request that the Advisory Team reject this objection because it was not filed before the 10 May 2013 deadline.

II. Malaga's challenges to the contents of the Hearing Procedures are Not Supported by Statute or Regulation

Even if the Advisory Team chooses entertain Malaga's untimely objections, the Prosecution disagrees with Malaga's assertions that the Hearing Procedures do not meet the requirements of the California Code of Regulations. Malaga argues that the Hearing Procedures issued for the May 2013 ACLC are an "absolute nullity" and were not issued under authority of the presiding officer for this adjudicatory proceeding in accordance with 23 CCR §648 et.seq (p. 2-3). It argues that the Hearing Procedures are inappropriate because they "require the submission of all evidence on an unspecified date in advance of the hearing" and that they have improperly waived the requirements of 23 CCR §648 et.seq. without the input of the presiding officer as required by §648(d). Counsel's conclusions are baseless and without merit.

Firstly, Malaga's claim that the Hearing Procedures require it to "submit evidence at an unspecified date" is simply inaccurate. Page 6 of the Hearing Procedures clearly states that 25 June 2013 is the Discharger's deadline to submit all information required under "Submission of Evidence and Policy Statements."

Secondly, Malaga's claim that the Hearing Procedures do not meet the requirements of the California Code of Regulations is incorrect. The Hearing Procedures issued to Malaga with the May 2013 ACLC follow the Central Valley Water Board's pre-approved Hearing Procedure format. These pre-approved hearing procedures were adopted by the Board Chair after thorough review by the Board's legal advisors to ensure that they meet all statutory requirements and regulatory requirements for adjudicatory proceedings. Adoption of the hearing procedures by the Board's chairman satisfies the requirements of Section 648(d); as the "presiding officer," the Board Chair has the authority to waive any additional procedural requirement not specifically provided within the Hearing Procedures, including Chapter 5 of the Administrative Procedure Act (Gov. Code §11500 et seq.). Malaga's obtrusive argument that it is "not going to comply with [the Regional Board's] purported hearing procedures" and suggestion that we should instead "follow the statute" (assumedly the Administrative Procedure Act) is simply not supported by the requirements of any regulation or statute.

Furthermore, Malaga's claim that that the Hearing Procedures are a violation of the Constitution is utter morology. The Hearing Procedures issued to Malaga are consistent with the Hearing Procedures issued for all other Administrative Civil Liability Complaints brought before the Central Valley Water Board. Malaga has been granted sufficient due process under the Hearing Procedures to submit evidence in its own defense and present testimony and cross-examine witnesses at hearing.

III. Malaga's Argument that the Violations Contained in the May 2013 ACLC are Untimely is an Issue for the Regional Board to Decide

Malaga argues that "any enforcement action relative to [violations between August 9, 2007 and November 30, 2010] are barred by operation of law," and that "the Executive Officer of your agency has falsely stated, presumably to avoid the legal bar referred to above, that violations occurred 'through 31 December 2012'." Counsel seems to be making an oblique reference to either the statute of limitations for civil actions (California Code of Civil Procedure §§312-366) or the defense of laches in equity, and arguing that some of the violations at issue in the May 2013 ACLC should not be imposed by the Central Valley Water Board.

Malaga has every right to argue that the penalties in the Complaint are untimely. However, this is a substantive argument against the proposed penalty that should be raised before the Central Valley Water Board, and not an issue to be decided by the Advisory Team as part of ruling on the Objections to the Hearing Procedures. As such, the Prosecution Team will not respond to these arguments in this submission. The Prosecution Team suggests that Malaga raise these issues as part of its Submission of Evidence and Policy Statements, and the Prosecution Team will plan to respond to these arguments as part of our Rebuttal Evidence.

IV. Malaga's Argument That It Did Not Violate Water Code Section 13385 and/or That

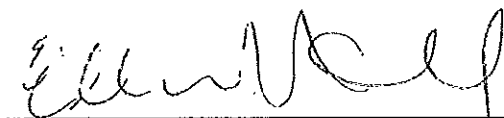
Violations Were Already Resolved Are Arguments to Be Decided by the Regional Board

Likewise, Malaga argues that the violations at issue in the May 2013 Complaint do not meet the definition of "chronic" under Water Code §13385(i), or were already resolved by a Compliance Project. These are also substantive arguments against the proposed penalty that should be raised before the Central Valley Water Board at hearing, and not an issue to be decided by the Advisory Team at this juncture. The Prosecution Team suggests that Malaga raise these issues in its Evidence submission, and we will likewise respond to them in our Rebuttal.

Dated: May 28, 2013

Respectfully submitted,

By:



Ellen Howard, Counsel
CALIFORNIA REGIONAL WATER
QUALITY CONTROL BOARD, CENTRAL
VALLEY REGION PROSECUTION TEAM

Attachment A

NEAL E. COSTANZO
MICHAEL G. SLATER

LAW OFFICES
COSTANZO & ASSOCIATES
A PROFESSIONAL CORPORATION
575 E. LOCUST AVENUE
SUITE 115
FRESNO, CALIFORNIA 93720-2928
(559) 261-0163

FAX (559) 261-0708
OUR FILE NO. 03024-005

May 23, 2013

Via US Mail & Email: lonnie.wass@waterboards.ca.gov
Lonnie Wass, Supervising Engineer &
Pamela Creedon, Executive Officer
Central Valley Regional
Water Quality Control Board
1685 E. Street
Fresno, CA 93706

**Re: Administrative Civil Liability Complaint R5-2013-05274 Assessment
of Mandatory Minimum Penalties (MMP), Malaga County Water
District (Malaga), Waste Water Treatment Facility (WWTP); and
NPDES 0084239, RM 390069, Fresno County**

Dear Ms. Wass and Ms. Creedon:

The referenced "Administrative Civil Liability Complaint" (Complaint) together with your May 1, 2013, letter has been referred to me for a response.

As I have noted probably six times previously, each and all of the purported violations that are referred to in your complaint are alleged to have occurred, by the Attachment A to that complaint, primarily between August 9, 2007 and November 30, 2010. There are two purported violations that are alleged to have occurred in March of 2011. Any enforcement action relative to these alleged violations, and all of them, is barred by operation of law. Any evidence in support of the alleged violations would be legally irrelevant and inadmissible in any proceeding. It is clear the Complaint, which is in many respects absolutely non-sensical, was not drafted or even reviewed by an attorney, as it fails to conform to the most rudimentary requirements of a complaint.

What I find offensive is that the Executive Officer of your agency has falsely stated, presumably to avoid the legal bar referred to above, that the violations occurred "through 31 December 2012". The violations, however, are all allegedly set forth in your Attachment A and there is no allegation of any violation occurring anywhere near December 31, 2012. Of course, this is the same Attachment A that accompanied a series of notices of violation that are referred to in the complaint and which the District duly responded to, normally through me. Each and all of the 'violations' listed in the Attachment A, as you have been told previously, do not amount to violations of any requirement and provide no basis for the imposition of MMP's. The proposed Administrative Civil Liability is based upon a purported violation or violations that are not supported by the data or are not violations subject to

MMP's as defined by Water Code §13385, in particular, those violations classified as chronic. Malaga disagrees with the interpretation of §13385(i)(2) that is consistently set forth in fn 6 of Attachment A reproduced in this complaint and as it appeared in numerous notices of violation that we received, that there must be a six month period without any violation in order for a violation to be exempt under §13385(i)(2)(A). Furthermore, many of the alleged violations contained in Attachment A to the Complaint are the subject of a compliance project or projects and/or a pollution prevention plan that your agency expressly agreed could be performed in lieu of any MMP. The issuance of this complaint which now apparently attempts to sanction Malaga twice for violations as to which you agreed would be satisfied by the completion of certain compliance projects means that the vast majority of the purported violations listed in Exhibit A are barred for a different reason other than the passage of time alone.

Your May 1, 2013, letter in addition to the complaint itself purportedly gives the District three options as follows:

1. Waive the right to a hearing on the complaint and pay the proposed civil liability fine;
2. Enter into settlement discussions with the Board and request that any hearing on the complaint be delayed; or
3. Contest the complaint and/or enter into settlement negotiations with the Board.

Please be advised that Malaga will contest the complaint and will appear at the hearing to be conducted on July 25 and 26, 2013. Malaga has no desire to enter into settlement negotiations with any agency that has demonstrated, repeatedly, that it will not abide by a settlement agreement made previously. You should be aware that the filing of what is plainly a frivolous complaint which is so plainly barred by operation of law subjects your agency to an order awarding Malaga all costs and attorneys fees incurred as a result (Government Code §11455.30).

Your May 1, 2013, letter suggests that "any comments or evidence concerning the enclosed complaint must be supplied" to your agency by May 24, 2013 and that this includes "materials submitted by the District to be considered at a hearing. . .". You are sorely misinformed about the procedural requirements that apply to the administrative processing of your complaint. This is demonstrated further by the "Hearing Procedure for Administrative Civil Liability Complaint R5-2013-0527" which similarly purports to require the submission of all evidence, on an unspecified date in advance of the hearing. The hearing procedure document further states that "In accordance with §648(d) [of Title 23 of the California Code of Regulations] any procedure not provided by this hearing procedure is deemed waived". For your information, subdivision (d) of §648 states that the "presiding officer may waive any requirements in these regulations pertaining to the conduct of adjudicative proceedings including but limited to the introduction of evidence, the order of proceeding, the examination or cross-examination of witnesses and the presentation of

argument, so long as those requirements are not mandated by state or federal statute or by state or federal constitutions". You are not the presiding officer. Moreover, what you are attempting to waive is Malaga's due process rights under the federal and state Constitutions and Malaga does not consent to your attempt to waive these procedures. You are not purporting to waive any "requirements" of the regulations, you are attempting to waive on behalf of Malaga the rights it has as a party accused of violating the Water Code. You, as a state agency are required to conform precisely to your own regulations and to the provisions of the statute which relate to this complaint. Malaga will insist on strict compliance. Lastly, your hearing procedure document discloses that you are contemplating conducting a hearing before a board that is not impartial in that they are being asked to decide the correctness of the decision of their own Executive Officer. Any hearing before the Board would be an unconstitutional proceeding in that the Board is not impartial. Malaga is not going to comply with your purported hearing procedures. Malaga is going to comply with the statute. The attempts to limit the time during which presentations of evidence may be made and the context in which that can be done is a clear violation of the Constitution. This hearing procedure document, is an absolute nullity. Any requirements relating to a hearing procedure must be prescribed by statute or regulation or by the presiding officer consistent with statute or regulation.

Lastly, you provided with your hearing procedure document which was issued by mail (purportedly) on May 3, 2013 but was not received in our office, interestingly, until May 16, 2013, a list of deadlines which had already passed by the date of our receipt of your falsely dated document.

Needless to say, it seems unlikely that your hearing is going to proceed as scheduled given your written threats to deprive Malaga County Water District of due process and the written representations we have received that you are not going to conform to those regulations and statutes that are applicable to the complaint you imprudently issued. Kindly advise me whether you are authorized to receive service of process on behalf of the Central Valley Regional Water Quality Control Board which is, apparently, the entity that is threatening to preside over this unlawful proceeding against Malaga. If we fail to hear from you, we will simply serve you in the manner which any state agency is allowed to be served which may or may not provide you with sufficient advance notification of a need to respond to our application for an injunction and writ of mandate.

Very truly yours,

COSTANZO & ASSOCIATES

Neal E. Costanzo

NEC/js

Howard, Ellen@Waterboards

From: Walsh, Jill@Waterboards
Sent: Friday, May 03, 2013 3:39 PM
To: Creedon, Pamela@Waterboards; Carrigan, Cris@Waterboards; Howard, Ellen@Waterboards; Okun, Lori@Waterboards; Coupe, David@Waterboards; Greenberg.ken@Epa.gov; EnvironmentalHealth@co.fresno.ca.us
Cc: ncostanzo@costanzolaw.com; Russ Holcomb (rholcomb@malagacwd.org); Wass, Lonnie@Waterboards; Gross, Warren@Waterboards
Subject: Administrative Civil Liability Complaint R5-2013-0527
Attachments: MALAGA_HRNG_PRCDR_MAY_3_JKW.PDF

Good Afternoon,

Attached please find the Hearing Procedure for Administrative Civil Liability Complaint (ACLC) R5-2013-0527 issued to Malaga County Water District on 1 May 2013. It was inadvertently left out of the original ACLC package.

If you have any questions, feel free to contact me.

Jill Walsh
Sanitary Engineering Associate
Central Valley Regional Water Quality Control Board – Fresno
1685 "E" Street
Fresno, CA 93706
Phone: (559) 445-5130
Fax: (559) 445-5910



EDMUND G. BROWN JR.
GOVERNOR

MATTHEW RODRIGUEZ
SECRETARY FOR
ENVIRONMENTAL PROTECTION

Central Valley Regional Water Quality Control Board

3 May 2013

Russ Holcomb
General Manager
Malaga County Water District
3580 South Frank Street
Fresno, CA 93725

CERTIFIED MAIL:
7011 0110 0001 2272 4540

HEARING PROCEDURE FOR ADMINISTRATIVE CIVIL LIABILITY R5-2013-0527, MALAGA COUNTY WATER DISTRICT, WASTEWATER TREATMENT FACILITY, (NPDES CA0084239, RM 390069), FRESNO COUNTY

On 1 May 2013 the Executive Officer of the Central Valley Water Board issued Administrative Civil Liability Complaint R5-2013-0527 (ACLC) to Malaga County Water District, alleging violation of Water Code section 13385 for effluent limitation violations. The original ACLC package did not contain the attached *Hearing Procedure*. Please find a copy of this form attached to this correspondence.

If you have any questions, please contact Ellen Howard at (916) 341-5677 or ehoward@waterboards.ca.gov, or Jill Walsh at (559) 445-5130 or jwalsh@waterboards.ca.gov.

Lonnie Wass
Supervising Engineer

Enclosure: Hearing Procedure

cc w/ encl: Neal Costanzo, Law Offices of Costanzo & Assoc., Fresno

cc w/ encl (via e-mail):

Pamela Creedon, Central Valley Water Board, Rancho Cordova
Cris Carrigan, Office of Enforcement, SWRCB, Sacramento
Ellen Howard, Office of Enforcement, SWRCB, Sacramento
Lori Okun, Office of Chief Counsel, SWRCB, Sacramento
David Coupe, Office of Chief Counsel, SWRCB, Sacramento
Kenneth Greenberg, USEPA, Region 9, San Francisco
Fresno County Environmental Health Division, Fresno

KARL E. LONGLEY ScD, P.E., CHAIR | PAMELA C. CREEDON P.E., BCCE, EXECUTIVE OFFICER

1685 E Street, Fresno, CA 93706 | www.waterboards.ca.gov/centralvalley

Central Valley Regional Water Quality Control Board

HEARING PROCEDURE
FOR ADMINISTRATIVE CIVIL LIABILITY COMPLAINT
R5-2013-0527

ISSUED TO
MALAGA COUNTY WATER DISTRICT
WASTEWATER TREATMENT FACILITY
FRESNO COUNTY

SCHEDULED FOR 25/26 JULY 2013

PLEASE READ THIS HEARING PROCEDURE CAREFULLY. FAILURE TO COMPLY WITH THE DEADLINES AND OTHER REQUIREMENTS CONTAINED HEREIN MAY RESULT IN THE EXCLUSION OF YOUR DOCUMENTS AND/OR TESTIMONY.

Overview

Pursuant to Water Code section 13323, the Executive Officer has issued an Administrative Civil Liability (ACL) Complaint to Malaga County Water District alleging violations of Water Code section 13385 for the discharge of wastewater from its wastewater treatment plant that exceeded permitted effluent limitations. The ACL Complaint proposes that the Central Valley Water Board impose administrative civil liability in the amount of \$72,000. A hearing is currently scheduled to be conducted before the Board during its 25/26 July 2013 meeting.

The purpose of the hearing is to consider relevant evidence and testimony regarding the ACL Complaint. At the hearing, the Central Valley Water Board will consider whether to issue an administrative civil liability order assessing the proposed liability, or a higher or lower amount. The Board may also decline to assess any liability, or may continue the hearing to a later date. If less than a quorum of the Board is available, this matter may be conducted before a hearing panel. The public hearing will commence at 8:30 a.m. or as soon thereafter as practical, or as announced in the Board's meeting agenda. The meeting will be held at:

11020 Sun Center Drive, Suite 200, Rancho Cordova, California.

An agenda for the meeting will be issued at least ten days before the meeting and posted on the Board's web page at:

http://www.waterboards.ca.gov/centralvalley/board_info/meetings

Hearing Procedure

The hearing will be conducted in accordance with this Hearing Procedure, which has been approved by the Board Chair for the adjudication of such matters. The procedures governing adjudicatory hearings before the Central Valley Water Board may be found at California Code of Regulations, title 23, section 648 et seq., and are available at:

<http://www.waterboards.ca.gov>

Copies will be provided upon request. In accordance with Section 648(d), any procedure not provided by this Hearing Procedure is deemed waived. Except as provided in Section 648(b) and herein, Chapter 5 of the Administrative Procedures Act (Gov. Code, § 11500 et seq.) does not apply to this hearing.

The Discharger shall attempt to resolve objections to this Hearing Procedure with the Prosecution Team BEFORE submitting objections to the Advisory Team.

Separation of Prosecutorial and Advisory Functions

To help ensure the fairness and impartiality of this proceeding, the functions of those who will act in a prosecutorial role by presenting evidence for consideration by the Board (the "Prosecution Team") have been separated from those who will provide legal and technical advice to the Board (the "Advisory Team"). Members of the Advisory Team are: Ken Landau, Assistant Executive Officer and David Coupe, attorney. Members of the Prosecution Team are: Pamela Creedon, Executive Officer; Clay L. Rodgers, Assistant Executive Officer; Lonnie M. Wass, Supervising Engineer, Warren W. Gross, Senior Engineering Geologist; Jill K. Walsh, Sanitary Engineering Associate, Ellen Howard, Attorney, and James Ralph, Attorney.

Any members of the Advisory Team who normally supervise any members of the Prosecution Team are not acting as their supervisors in this proceeding, and vice versa. Pamela Creedon regularly advises the Central Valley Water Board in other, unrelated matters, but is not advising the Central Valley Water Board in this proceeding. Other members of the Prosecution Team act or have acted as advisors to the Central Valley Water Board in other, unrelated matters, but they are not advising the Central Valley Water Board in this proceeding. Members of the Prosecution Team have not had any ex parte communications with the members of the Central Valley Water Board or the Advisory Team regarding this proceeding.

Hearing Participants

Participants in this proceeding are designated as either "Designated Parties" or "Interested Persons." Designated Parties may present evidence and cross-examine witnesses and are subject to cross-examination. Interested Persons may present non-evidentiary policy statements, but may not cross-examine witnesses and are not subject to cross-examination. Interested Persons generally may not present evidence (e.g., photographs, eye-witness testimony, monitoring data). At the hearing, both Designated Parties and Interested Persons may be asked to respond to clarifying questions from the Central Valley Water Board, staff, or others, at the discretion of the Board Chair.

The following participants are hereby designated as Designated Parties in this proceeding:

1. Central Valley Water Board Prosecution Team
2. Malaga County Water District

Requesting Designated Party Status

Persons who wish to participate in the hearing as a Designated Party must request designated party status by submitting a request in writing so that it is received no later than the deadline listed under "Important Deadlines" below. The request shall include an explanation of the basis for status as a Designated Party (i.e., how the issues to be addressed at the hearing affect the person, the need to present evidence or cross-examine witnesses), along with a statement explaining why the parties listed above do not adequately represent the person's interest. Any objections to these requests for designated party status must be submitted so that they are received no later than the deadline listed under "Important Deadlines" below.

Primary Contacts

Advisory Team:

Kenneth Landau

11020 Sun Center Drive, Suite 200, Rancho Cordova, CA 95670

Phone: (916) 464-3291

klandau@waterboards.ca.gov

David P. Coupe, Senior Staff Counsel
c/o San Francisco Bay Regional Water Quality Control Board
1515 Clay Street, Suite 1400
Oakland, CA 94612
Phone: (510) 622-2306
Fax: (510) 622-2460
dcoupe@waterboards.ca.gov

Prosecution Team:

Lonnle Wass, Supervising Engineer
1685 E Street, Fresno, CA 93706
Phone: (559) 445-5116; fax: (559) 445-5910
lwass@waterboards.ca.gov

Ellen Howard, Staff Counsel
State Water Resources Control Board, Office of Enforcement
Physical Address: 1001 I Street, Sacramento, CA 95814
Mailing Address: P.O. Box 100, Sacramento, CA 95812
Phone: (916) 341-5677; fax: (916) 341-5284
Ellen.Howard@waterboards.ca.gov

James Ralph, Staff Counsel
State Water Resources Control Board, Office of Enforcement
Physical Address: 1001 I Street, Sacramento, CA 95814
Mailing Address: P.O. Box 100, Sacramento, CA 95812
Phone: (916) 322-3227, fax: (916) 341-5284
James.Ralph@waterboards.ca.gov

Discharger

Russ Holcomb, General Manager
Malaga County Water District
3580 South Frank Street,
Fresno, CA 93720
Phone: (530) 485-2341
rholcomb@malagacwd.org

Ex Parte Communications

Designated Parties and Interested Persons are forbidden from engaging in ex parte communications regarding this matter. An ex parte communication is a written or verbal communication related to the investigation, preparation, or prosecution of the ACL Complaint between a Designated Party or an Interested Person and a Board Member or a member of the Board's Advisory Team (see Gov. Code, § 11430.10 et seq.). However, if the communication is copied to all other persons (if written) or is made in a manner open to all other persons (if verbal), then the communication is not considered an ex parte communication. Communications regarding non-controversial procedural matters are also not considered ex parte communications and are not restricted.

Hearing Time Limits

To ensure that all participants have an opportunity to participate in the hearing, the following time limits shall apply: each Designated Party shall have a combined 30 minutes to present evidence (including evidence presented by witnesses called by the Designated Party), to cross-examine witnesses (if warranted), and to provide a closing statement. Each Interested Person shall have 3 minutes to present a non-evidentiary policy statement. Participants with similar interests or comments are requested to make joint presentations, and participants are requested to avoid redundant comments. Participants who would like additional time must submit their request to the Advisory Team so that it is received no later than the deadline listed under "Important Deadlines" below. Additional time may be provided at the discretion of the Advisory Team (prior to the hearing) or the Board Chair (at the hearing) upon a showing that additional time is necessary. Such showing shall explain what testimony, comments, or legal argument requires extra time, and why it could not have been provided in writing by the applicable deadline.

A timer will be used, but will not run during Board questions or the responses to such questions, or during discussions of procedural issues.

Submission of Evidence and Policy Statements

The Prosecution Team and all other Designated Parties (including the Discharger) must submit the following information in advance of the hearing:

1. All evidence (other than witness testimony to be presented orally at the hearing) that the Designated Party would like the Central Valley Water Board to consider. Evidence and exhibits already in the public files of the Central Valley Board may be submitted by reference, as long as the exhibits and their location are clearly identified in accordance with California Code of Regulations, title 23, section 648.3. Board members will not generally receive copies of materials incorporated by reference unless copies are provided, and the referenced materials are generally not posted on the Board's website.
2. All legal and technical arguments or analysis.
3. The name of each witness, if any, whom the Designated Party intends to call at the hearing, the subject of each witness' proposed testimony, and the estimated time required by each witness to present direct testimony.
4. The qualifications of each expert witness, if any.

Prosecution Team: The Prosecution Team's information must include the legal and factual basis for its claims against each Discharger; a list of all evidence on which the Prosecution Team relies, which must include, at a minimum, all documents cited in the ACL Complaint, Staff Report, or other material submitted by the Prosecution Team; and the witness information required under items 3-4 for all witnesses, including Board staff.

Designated Parties (including the Discharger): All Designated Parties shall submit comments regarding the ACL Complaint along with any additional supporting evidence not cited by the Central Valley Water Board's Prosecution Team no later than the deadline listed under "Important Deadlines" below.

Rebuttal: Any Designated Party that would like to submit evidence, legal analysis, or policy statements to rebut information previously submitted by other Designated Parties shall submit this rebuttal information so that it is received no later than the deadline listed under "Important Deadlines" below. "Rebuttal" means evidence, analysis or comments offered to disprove or contradict other submissions. Rebuttal shall be limited to the scope of the materials previously submitted. Rebuttal information that is not responsive to information previously submitted may be excluded.

Copies: Board members will receive copies of all submitted materials. The Board Members' hard copies will be printed in black and white on 8.5"x11" paper from the Designated Parties' electronic copies. Designated Parties who are concerned about print quality or the size of all or part of their written materials should provide an extra nine paper copies for the Board Members. For voluminous submissions, Board Members may receive copies in electronic format only. Electronic copies will also be posted on the Board's website. Parties without access to computer equipment are strongly encouraged to have their materials scanned at a copy or mailing center. The Board will not reject materials solely for failure to provide electronic copies.

Other Matters: The Prosecution Team will prepare a summary agenda sheet (Summary Sheet) and will respond to all significant comments. The Summary Sheet and the responses shall clearly state that they were prepared by the Prosecution Team. The Summary Sheet and the responses will be posted online, as will revisions to the proposed Order.

Interested Persons: Interested Persons who would like to submit written non-evidentiary policy statements are encouraged to submit them to the Advisory Team as early as possible, but they must be received by the deadline listed under "Important Deadlines" to be included in the Board's agenda package. Interested Persons do not need to submit written comments in order to speak at the hearing.

Prohibition on Surprise Evidence: In accordance with California Code of Regulations, title 23, section 648.4, the Central Valley Water Board endeavors to avoid surprise testimony or evidence. Absent a showing of good cause and lack of prejudice to the parties, the Board Chair may exclude evidence and testimony that is not submitted in accordance with this Hearing Procedure. Excluded evidence and testimony will *not* be considered by the Central Valley Water Board and will not be included in the administrative record for this proceeding.

Presentations: Power Point and other visual presentations may be used at the hearing, but their content shall not exceed the scope of other submitted written material. These presentations must be provided to the Advisory Team at or before the hearing both in hard copy and in electronic format so that they may be included in the administrative record.

Witnesses: All witnesses who have submitted written testimony shall appear at the hearing to affirm that the testimony is true and correct, and shall be available for cross-examination.

Evidentiary Documents and File

The ACL Complaint and related evidentiary documents are on file and may be inspected or copied at the Central Valley Water Board office at 11020 Sun Center Drive, Rancho Cordova, CA 95670. This file shall be considered part of the official administrative record for this hearing. Other submittals received for this proceeding will be added to this file and will become a part of the administrative record absent a contrary ruling by the Central Valley Water Board's Chair. Many of these documents are also posted on-line at:

http://www.waterboards.ca.gov/centralvalley/board_decisions/tentative_orders/index.shtml

Although the web page is updated regularly, to assure access to the latest information, you may contact Wendy Wyels (contact information above) for assistance obtaining copies.

Questions

Questions concerning this proceeding may be addressed to the Advisory Team attorney (contact information above).

IMPORTANT DEADLINES

All required submissions must be received by 5:00 p.m. on the respective due date.

1 May 2013	<ul style="list-style-type: none"> Prosecution Team issues ACL Complaint, Hearing Procedure, and other related materials.
10 May 2013	<ul style="list-style-type: none"> Objections due on Hearing Procedure. Deadline to request "Designated Party" status. <p><u>Electronic or Hard Copies to:</u> All other Designated Parties, All known Interested Persons, Prosecution Team Attorney, Advisory Team Attorney</p> <p><u>Electronic and Hard Copies to:</u> Prosecution Team Primary Contact, Advisory Team Primary Contact</p>
10 May 2013	<ul style="list-style-type: none"> Deadline to submit opposition to requests for Designated Party status. <p><u>Electronic or Hard Copies to:</u> All other Designated Parties, All known Interested Persons, Prosecution Team Attorney, Advisory Team Attorney</p> <p><u>Electronic and Hard Copies to:</u> Prosecution Team Primary Contact, Advisory Team Primary Contact</p>
24 May 2013	<ul style="list-style-type: none"> Discharger's deadline to submit <i>90-Day Hearing Waiver Form</i>. <p><u>Electronic or Hard Copy to:</u> Prosecution Team Primary Contact</p>
30 May 2013*	<ul style="list-style-type: none"> Advisory Team issues decision on requests for designated party status. Advisory Team issues decision on Hearing Procedure objections.
5 June 2013*	<ul style="list-style-type: none"> Prosecution Team's deadline for submission of information required under "Submission of Evidence and Policy Statements," above. <p><u>Electronic or Hard Copies to:</u> All other Designated Parties, All known Interested Persons</p> <p><u>Electronic and Hard Copies to:</u> Advisory Team Primary Contact, Advisory Team Attorney</p>
25 June 2013*	<ul style="list-style-type: none"> Remaining Designated Parties' (including the Discharger's) deadline to submit all information required under "Submission of Evidence and Policy Statements" above. This includes all written comments regarding the ACL Complaint. Interested Persons' comments are due. <p><u>Electronic or Hard Copies to:</u> All other Designated Parties, All known Interested Persons, Prosecution Team Attorney, Advisory Team Attorney</p> <p><u>Electronic and Hard Copies to:</u> Prosecution Team Primary Contact, Advisory Team Primary Contact</p>
2 July 2013*	<ul style="list-style-type: none"> All Designated Parties shall submit any rebuttal evidence, any rebuttal to legal arguments and/or policy statements, and all evidentiary objections. Deadline to submit requests for additional time. If rebuttal evidence is submitted, all requests for additional time (to respond to the rebuttal at the hearing) must be made within 3 working days of <i>this</i> deadline. <p><u>Electronic or Hard Copies to:</u> All other Designated Parties, All known Interested Persons, Prosecution Team Attorney, Advisory Team Attorney</p> <p><u>Electronic and Hard Copies to:</u> Prosecution Team Primary Contact, Advisory Team Primary Contact</p>
3 July 2013*,†	<ul style="list-style-type: none"> Prosecution Team submits Summary Sheet and responses to comments. <p><u>Electronic or Hard Copies to:</u> All other Designated Parties, All known Interested Persons</p>

	<u>Electronic and Hard Copies to:</u> Advisory Team Primary Contact, Advisory Team Attorney
25/26 July 2013*	▪ Hearing

** Dischargers have the right to a hearing before the Board within 90 days of receiving the Complaint, but this right can be waived (to facilitate settlement discussions, for example). By submitting the waiver form, the Discharger is not waiving the right to a hearing; unless a settlement is reached, the Board will hold a hearing prior to imposing civil liability. However, if the Board accepts the waiver, all deadlines marked with an "*" will be revised if a settlement cannot be reached.*

† This deadline is set based on the date that the Board compiles the Board Members' agenda packages. Any material received after this deadline will not be included in the Board Members' agenda packages.

Attachment C

Howard, Ellen@Waterboards

From: Hall, Melissa@Waterboards
Sent: Tuesday, May 28, 2013 12:03 PM
To: Bennett, Jarma@Waterboards
Cc: Howard, Ellen@Waterboards
Subject: RE: emails

Thank you.

From: Bennett, Jarma@Waterboards
Sent: Tuesday, May 28, 2013 11:11 AM
To: Hall, Melissa@Waterboards
Subject: RE: emails

The CIWQS Help Center does not have any non-deliverables in their Outlook email box (which would cover the last 90 days).

From: Bennett, Jarma@Waterboards
Sent: Tuesday, May 28, 2013 10:31 AM
To: Hall, Melissa@Waterboards
Subject: emails

Here is an export of the emails we have record of sending to "@malagacwd.org." The text doesn't look too good in Excel, but hopefully you get the gist of it from what you can read. If you want to see the online version on specific ones, let me know and I can show you or take screen shots.

Let me know if you have any questions about it.

I've sent an email to the ciwqs help center to see if we have received any non-deliverables from those sent emails.

Jarma Bennett
Office of Information Management and Analysis
California State Water Resources Control Board
(916) 341-5532; jbennett@waterboards.ca.gov

[illegible]

EXHIBIT H

Neal Costanzo

From: Neal Costanzo
Sent: Thursday, June 06, 2013 1:47 PM
To: Neal Costanzo
Subject: .Fwd: ACLC R5-2013-0527: Prosecution Team Submission of Evidence and Policy Statements

Sent from my iPhone

Begin forwarded message:

From: "Howard, Ellen@Waterboards" <Ellen.Howard@waterboards.ca.gov>
Date: June 6, 2013, 1:38:27 PM PDT
To: Neal Costanzo <NCostanzo@costanzolaw.com>, "Landau, Ken@Waterboards" <Ken.Landau@waterboards.ca.gov>, "Coupe, David@Waterboards" <David.Coupe@waterboards.ca.gov>
Cc: "rholcomb@malagacwd.org" <rholcomb@malagacwd.org>, "Rodgers, Clay@Waterboards" <Clay.Rodgers@waterboards.ca.gov>, "Walsh, Jill@Waterboards" <Jill.Walsh@waterboards.ca.gov>, "Gross, Warren@Waterboards" <Warren.Gross@waterboards.ca.gov>, "Wass, Lonnie@Waterboards" <Lonnie.Wass@waterboards.ca.gov>, "Creedon, Pamela@Waterboards" <Pamela.Creedon@waterboards.ca.gov>, "Ralph, James@Waterboards" <James.Ralph@waterboards.ca.gov>
Subject: RE: ACLC R5-2013-0527: Prosecution Team Submission of Evidence and Policy Statements

Mr. Costanzo; The Prosecution Team's conduct in this matter fully comports with all ethical rules and the Regional Board's lawfully-adopted hearing procedures.

Pages 2 and 3 of the Hearing Procedures for this item contain contact information for Ken Landau and David Coupe, who are serving as the Advisory Team for the July Board Meeting. A copy of these Hearing Procedures was emailed to you at this email address on 3 May 2013 and delivered via certified mail and signed for by representatives of Malaga County Water District on 6 May 2013.

As my communication indicates, you are being provided with electronic copies of our entire evidence submission via CD, a copy of which was mailed to you and Malaga yesterday. This meets the requirements of the Hearing Procedures.

The remainder of your hyperbolic misstatements require no response.

Ellen Howard
Counsel for the Prosecution Team

Ellen Howard
Staff Counsel, Office of Enforcement
State Water Resources Control Board
1001 "I" Street
Sacramento, CA 95814

From: Neal Costanzo [<mailto:NCostanzo@costanzolaw.com>]
Sent: Thursday, June 06, 2013 9:19 AM
To: Howard, Ellen@Waterboards; Landau, Ken@Waterboards; Coupe, David@Waterboards
Cc: rholcomb@malagacwd.org; Rodgers, Clay@Waterboards; Walsh, Jill@Waterboards; Gross, Warren@Waterboards; Wass, Lonnie@Waterboards; Creedon, Pamela@Waterboards; Ralph, James@Waterboards
Subject: RE: ACLC R5-2013-0527: Prosecution Team Submission of Evidence and Policy Statements

Ms. Howard.

Please stop direct communication with my client who you know to be represented by an attorney in this matter. Your conduct violates the ethical rules. You are to serve me with everything, not my client. Secondly, kindly advise me with whom and how you are filing these submissions with the agency that is hearing this matter. The notice of hearing procedures (which is an absolute nullity) that the prosecution team prepared without any authorization and in direct violation of law relating to the separation of the adjudicative and prosecutor functions does not tell us with whom our submissions are to be filed or how. The regulations of the regional board do not address how filings are to be made either. Lastly, since you cannot comply with the requirements that your prosecution team established unlawfully, because you have failed to submit any evidence or testimony by the due date you unlawfully set, Malaga cannot develop any response because we don't know what your evidence is and apparently we will not receive any of the evidence you intend to submit as reflected by the "index" you submitted. Certainly we will not have adequate time to review anything that you do provide by June 25, the deadline the prosecution team unlawfully established for the submission of Malaga's evidence. Needless to say, we will be objecting to the submission of any evidence in support of the complaint because it is plainly time barred. Thank you.

From: Howard, Ellen@Waterboards [<mailto:Ellen.Howard@waterboards.ca.gov>]
Sent: Wednesday, June 05, 2013 4:35 PM
To: Landau, Ken@Waterboards; Coupe, David@Waterboards
Cc: rholcomb@malagacwd.org; Neal Costanzo; Rodgers, Clay@Waterboards; Walsh, Jill@Waterboards; Gross, Warren@Waterboards; Wass, Lonnie@Waterboards; Creedon, Pamela@Waterboards; Ralph, James@Waterboards
Subject: ACLC R5-2013-0527: Prosecution Team Submission of Evidence and Policy Statements

FOR PURPOSES OF EX PARTE COMMUNICATIONS, THE DISCHARGER IS CC'ED ON THIS EMAIL

Mr. Landau and Mr. Coupe-

The Prosecution Team for the above-mentioned ACLC hereby submits its Evidence and Policy Statements as required by the Hearing Procedures. Due to the voluminous nature of the documents being submitted as evidence, the Prosecution Team is only submitting a copy of the index and the witness list along with this email. A copy of these exhibits will be burned on to a compact disk and mailed to all members of the Advisory Team and the Discharger. In addition, a single hard-copy of all evidence submitted as part of the Prosecution Team's case in chief will be produced at the Central Valley Water Board Rancho Cordova office.

Please do not hesitate to contact me if you have any questions.

Ellen Howard

Counsel for the Prosecution Team

Ellen Howard
Staff Counsel, Office of Enforcement
State Water Resources Control Board
1001 "I" Street
Sacramento, CA 95814
916.341.5677

EXHIBIT I

Neal Costanzo

From: Coupe, David@Waterboards <David.Coupe@waterboards.ca.gov>
Sent: Thursday, June 06, 2013 4:46 PM
To: Howard, Ellen@Waterboards; Creedon, Pamela@Waterboards; Rodgers, Clay@Waterboards; Walsh, Jill@Waterboards; Neal Costanzo; rholcomb@malagacwd.org; Gross, Warren@Waterboards; Wass, Lonnie@Waterboards; Ralph, James@Waterboards
Cc: Landau, Ken@Waterboards
Subject: ACLC R5-2013-0527: Malaga Water District

All:

This email makes pre-hearing rulings and provides additional information concerning the Central Valley Water Board's consideration of a pending enforcement action against Malaga County Water District. This email specifically responds to (1) Ms. Howard's email and attached Response to Objections of May 28, 2013 (Response) and (2) Mr. Costanzo's email of June 6th, 2013.

I. Ms. Howard's Response

As a member of the Advisory Team, I am in receipt of Ms. Howard's Response dated May 28, 2013. Her Response includes an Attachment A, which is a letter dated May 23, 2013 from Mr. Costanzo to Lonnie Wass and Pamela Creedon at the Central Valley Water Board. It should be noted that the Advisory Team was not put on notice of Mr. Costanzo's objections and did not receive Mr. Costanzo's correspondence dated May 23, 2013 until it was submitted by Ms. Howard as Attachment A to her Response on May 28, 2013 to all parties.

Ms. Howard's Response consists of four parts. She first claims that Mr. Costanzo's objections dated May 23, 2013 are untimely. It appears that Mr. Costanzo's written objections were not made to the Prosecution Team until 23 May 2013, thirteen days after the deadline to submit written objections to the Hearing Procedure. Furthermore, the Advisory Team never received a copy of the written objections from Malaga as specifically required in the Hearing Procedure. (Hearing Procedure at p. 6.)

With that said, it appears that there may be a factual question concerning when Mr. Costanzo actually received the Hearing Procedure and whether it was received after the May 10 deadline to file objections to the Hearing Procedure. Therefore, to the extent that Ms. Howard seeks to have Mr. Costanzo's objections dismissed as untimely, and given that the hearing for this matter is not scheduled for more than another month and one-half, this request is **DENIED**. However, it should be pointed out to the Designated Parties that the failure to comply with the Hearing Procedure may result in the exclusion of evidence or testimony as this may constitute prejudice to any designated party or the Central Valley Water Board. (Cal. Code Regs., tit. 23, § 648.4, subd. (d); see also Hearing Procedure at p. 5.)

Ms. Howard's second argument is that Malaga's challenges to the contents of the Hearing Procedure are not supported by statute or regulation. In response to Mr. Costanzo's claim that the Hearing Procedure is "an absolute nullity" because it presumably was not issued under authority of the presiding officer, (i.e., the Board Chair), Mr. Costanzo's objection is **DENIED**. The adjudicatory hearing scheduled for the July 25/26 Board Meeting will be conducted in accordance with the Hearing Procedure, the applicable statutes and regulations governing adjudicatory proceedings before the Central Valley Water Board, and any pre-hearing rulings by the Advisory Team after any necessary consultation with the Board Chair. It should be noted that the Hearing Procedure has been pre-approved by the Board Chair and after review by members of the Advisory Team.

Furthermore, to the extent that Mr. Costanzo objects that the Hearing Procedure is a violation of Malaga's due process rights, this objection is **DENIED**. Malaga has ample opportunity under the Hearing Procedure and under applicable statutes and regulations governing adjudicatory proceedings before the Central Valley Water Board to adequately and sufficiently defend its interests against the Prosecution Team's allegations in their Complaint. In addition, Mr. Costanzo's claim that a hearing before the Central Valley Water Board is not impartial "in that they [the Central Valley Water Board] are being asked to decide the correctness of the decision of their own Executive Officer" is misplaced. Consistent with due process and applicable case law, and pursuant to the Hearing Procedure, the Central Valley Water Board has established two separate and independent teams for this pending adjudicatory matter. One team, the Prosecution Team, is responsible for bringing enforcement actions to the Central Valley Water Board for its consideration. A second team, the Advisory Team, provides neutral legal and technical advice to the Board. At a duly noticed hearing, the Board then considers whether to adopt, reject, or modify the Prosecution Team's proposed action.

Ms. Howard's third argument responds to Mr. Costanzo's claim that the allegations are untimely. This issue is a substantive issue for the Central Valley Water Board to consider after consideration of the evidence and testimony from the Designated Parties and upon the technical and legal advice of the Advisory Team at the hearing. To the extent that Mr. Costanzo seeks to invalidate the Hearing Procedure on this ground, this objection is **DENIED**.

Similarly, the extent to which the violations at issue are "chronic" pursuant to Water Code section 13385, subdivision (i) or were already resolved by a Compliance Project, these are also substantive issues for the Central Valley Water Board to consider at the hearing. To the extent that Mr. Costanzo seeks to invalidate the Hearing Procedure on this basis, this objection is also **DENIED**.

II. Mr. Costanzo's Email of June 6th

Mr. Costanzo's email appears predominantly if not exclusively directed to Ms. Howard and does not ask the Advisory Team to make any ruling on a particular procedural matter at this time. Therefore, no specific ruling is required by the Advisory Team.

With that said, the Advisory Team notes that Mr. Costanzo seeks to know "[w]ith whom and how you are filing submissions with the agency that is hearing this matter." This information is detailed in the Hearing Procedure. To the extent that Mr. Costanzo has additional questions of strictly a procedural nature concerning this matter, he may contact me via email with a copy to all parties. In addition, the Advisory Team notes that the Hearing Procedure does provide information concerning to whom submissions are to be filed and in what manner. (See, e.g., Hearing Procedure at p. 6 under Important Deadlines.)

Finally, Mr. Costanzo once again makes the claim that the Hearing Procedure is "an absolute nullity." To the extent that Mr. Costanzo is seeking to renew an objection that the Hearing Procedure is somehow void or of no legal effect, this objection is **DENIED**.

As always, if you have any additional questions of strictly a procedural nature, please send an email to me and Mr. Landau with a copy to all parties.

David P. Coupe
Attorney III and Member of the Advisory Team
c/o San Francisco Bay Regional Water Quality Control Board
1515 Clay Street, Suite 1400
Oakland, CA 94612
Phone: (510) 622-2306
Fax: (510) 622-2460
E-mail: dcoupe@waterboards.ca.gov

